

or pricing data for which certification is determined inapplicable after submission.

Price, as used in this subpart, means cost plus any fee or profit applicable to the contract type.

Price analysis means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

Subcontract, as used in this subpart, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

Technical analysis, as used in this subpart, means the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors set forth in a proposal in order to determine and report on the need for and reasonableness of the proposed resources assuming reasonable economy and efficiency.

[48 FR 42187, Sept. 1983, as amended at 51 FR 36971, Oct. 16, 1986; 53 FR 10829, Apr. 1, 1988; 55 FR 52790, Dec. 21, 1990; 60 FR 48212, Sept. 18, 1995]

15.802 Policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that the Truth in Negotiations Act, as implemented in 15.804-2 and 15.804-5(b) permits, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No further information from the offeror if the price is based on adequate price competition, except as provided by 15.804-5(a)(3).

(2) Information other than cost or pricing data:

(i) Information related to prices (e.g., established catalog or market prices), relying first on information available within the Government; second, on information obtained from sources other

than the offeror; and, if necessary, on information obtained from the offeror.

(ii) Cost information, which does not meet the definition of cost or pricing data at 15.801.

(3) *Cost or pricing data*. The contracting officer should use every means available to ascertain a fair and reasonable price prior to requesting cost or pricing data. Contracting officers shall not unnecessarily require the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and wastes both contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor, or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

[60 FR 48212, Sept. 18, 1995]

15.803 General.

(a) Since information from sources other than an offeror's or contractor's records may significantly affect the Government's negotiating position, Government personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the contracting officer responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data supporting the proposal.

(b) Before issuing a solicitation, the contracting officer shall (when it is feasible to do so) develop an estimate of the proper price level or value of the supplies or services to be purchased. Estimates can range from simple budgetary estimates to complex estimates

based on inspection of the product itself and review of such items as drawings, specifications, and prior data.

(c) Price negotiation is intended to permit the contracting officer and the offeror to agree on a fair and reasonable price. Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the contributing specialists' opinions or with the contracting officer's prenegotiation objective. The contracting officer is responsible for exercising the requisite judgment and is solely responsible for the final pricing decision. The recommendations and counsel of contributing specialists, including auditors, are advisory only. However, the contracting officer should include comments in the price negotiation memorandum when significant audit or other specialist recommendations are not adopted.

(d) The contracting officer's primary concern is the price the Government actually pays; the contractor's eventual cost and profit or fee should be a secondary concern. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Government and the contractor. If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall then refer the contract action to higher authority. Disposition of the ac-

tion by higher authority should be documented.

[48 FR 42187, Sept. 19, 1983, as amended at 60 FR 48212, Sept. 18, 1995]

15.804 Cost or pricing data and information other than cost or pricing data.

15.804-1 Prohibition on obtaining cost or pricing data.

(a) *Exceptions to cost or pricing data requirements.* The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) If the contracting officer determines that prices agreed upon are based on—

(i) Adequate price competition (see exception standards at paragraph (b)(1) of this subsection);

(ii) Established catalog or market prices of commercial items sold in substantial quantities to the general public (see exception standards at paragraph (b)(2) of this section); or

(iii) Prices set by law or regulation (see exception standards at paragraph (b)(3) of this subsection).

(2) For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under paragraph (a)(1) of this section, but the contracting officer can determine the price is fair and reasonable (see exception standards at paragraph (b)(4) of this section and pricing requirements at 15.804-5(b));

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(5) of this section); or

(4) For modifications to contracts or subcontracts for commercial items, if the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) of this section and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception